IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| JILL WATERS | : | CIVIL ACTION |
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| v. | : | |
| | : | NO. 03-CV-2909 |
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| GENESIS HEALTH VENTURES, INC. | : | |
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**SURRICK, J.** **MAY 25, 2005**

**MEMORANDUM & ORDER**

Presently before the Court is Defendant Genesis Health Ventures, Inc.'s Motion In Limine To Preclude Plaintiff Jill Waters From Offering Testimony Or Evidence Of Dolores Breslin, Margaret Rodolico, And Edith Leonardo At Trial Regarding Their Perception Of Racial Animus And Instances Of Alleged Discriminatory Conduct By Marvin Kirkland (Doc. No. 103) and Plaintiff Jill Waters's Response (Doc. No. 111). For the following reasons, Defendant's Motion will be granted in part and denied in part.

**I. Factual Background**

Plaintiff, a Caucasian female, was employed by Defendant for ten years until her employment was terminated on September 23, 2002. (Doc. No. 6 at 2, 5.) On May 2, 2003, Plaintiff filed a Complaint against Defendant alleging discrimination on the basis of "age (59) and/or disability" in violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §§ 621-634, the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101-12213, the Pennsylvania Human Relations Act ("PHRA"), 43 Pa. Cons. Stat. §§ 951-963, and

retaliation.[1] (Doc. No. 1 at 1.) The Complaint contained no claim of discrimination based upon race.[2] In the Joint Case Report filed on or about August 29, 2003, Plaintiff reiterated that her Complaint was based on age and disability discrimination. (Doc. No. 6 at 1.) On March 8, 2004, almost a year after filing her Complaint, Plaintiff filed her First Amended Civil Action Complaint ("Amended Complaint"). (Doc. No. 18.) The Amended Complaint was the same as the original Complaint, but added a fifth count alleging reverse discrimination based upon race in violation of 42 U.S.C. § 1981. Thereafter, Plaintiff advised Defendant that she would not pursue the age discrimination claim in Count One.

On December 21, 2004, we granted summary judgment as to Plaintiff's ADA and PHRA claims and denied summary judgment as to her 42 U.S.C. § 1981 and retaliation claims. (Doc. No. 95.)

In June, 2002, Defendant hired Marvin Kirkland ("Kirkland"), an African-American male, as director of nursing. (Doc. No. 27 ¶ 13.) Kirkland supervised Plaintiff and other employees. The factors motivating Plaintiff's termination from employment are in dispute. Plaintiff alleges that her discharge was due to Kirkland's discriminatory animus. (*Id*. ¶¶ 16, 30.) Specifically, Plaintiff alleges reverse discrimination based upon race in violation of 42 U.S.C. § 1981. (Doc. No. 66 at 2.)

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[1]Plaintiff filed charges of discrimination with the Philadelphia office of the Equal Employment Opportunity Commission ("EEOC") on August 19, 2002, and October 16, 2002, on the basis of age and disability. (Doc. No. 1 at 3.) Those charges did not allege discrimination on the basis of race.

[2]The original Complaint contained four counts: (1) the ADEA claim; (2) the ADA claim; (3) the claim under 42 U.S.C. § 1981 alleging age discrimination; and (4) the PHRA claim. (Doc. No. 1.)

Defendant claims that Plaintiff was dismissed for performance-related reasons. Plaintiff responds that she had received positive reviews throughout her tenure until Defendant hired Kirkland in 2002. In 1998, Plaintiff was promoted to staff development coordinator. (*Id*. Ex. A at 29.) In 2001, Carol McQuillan, Defendant's administrator, offered Plaintiff another promotion. (*Id*. Exs. A. at 64, D at 144.)

Defendant's instant Motion in Limine seeks to preclude testimony of Dolores Breslin ("Breslin"), Margaret Rodolico ("Rodolico"), and Edith Leonardo ("Leonardo"), all of whom worked in Defendant's Crestview facility, regarding their perceptions of Kirkland's allegedly discriminatory conduct. (Doc. No. 103 at 1.)

**II. Legal Standard**

Federal Rule of Evidence 401 provides that evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401. Federal Rule of Evidence 402 provides that "all relevant evidence is admissible." Fed. R. Evid. 402. The Third Circuit has noted that "Rule 401 does not raise a high standard." *Hurley v. Atl. City Police Dep't*, 174 F.3d 95, 109-10 (3d Cir. 1999) (quoting *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 782-83 (3d Cir. 1994)). The Third Circuit has stated:

> As noted in the Advisory Committee's Note to Rule 401, "relevancy is not an inherent characteristic of any item of evidence but exists only as a relation between an item of evidence and a matter properly provable in the case." Because the rule makes evidence relevant "if it has any tendency to prove a consequential fact, it follows that evidence is irrelevant only when it has no tendency to prove the fact."

*Blancha v. Raymark Indus*., 972 F.2d 507, 514 (3d Cir. 1992) (quoting Charles A. Wright &

Kenneth W. Graham, Jr., Federal Practice and Procedure § 5166, at 74 n.47 (1978)).

Under Federal Rule of Evidence 403, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Fed. R. Evid. 403. The Third Circuit has stated:

> [T]he . . . prejudice against which the law guards [is] . . . unfair prejudice . . . prejudice of the sort which clouds impartial scrutiny and reasoned evaluation of the facts, which inhibits neutral application of principles of law to the facts as found. Prejudice does not simply mean damage to the opponent's cause. If it did, most relevant evidence would be deemed "prejudicial." However, the fact that probative evidence helps one side prove its case obviously is not grounds for excluding it under Rule 403. Excluded evidence must be unfairly prejudicial, not just prejudicial.

*Goodman v. Pa. Tpk. Comm'n*, 293 F.3d 655, 670 (3d Cir. 2002) (citations omitted).

## III. Discussion

### *A. Breslin's Testimony*

Defendant asserts that Plaintiff should be precluded from offering Breslin's testimony, but fails to identify the testimony or evidence that it seeks to exclude. (Doc. No. 103 at 1.) Plaintiff, however, indicates that she intends to present testimony that when Breslin was asked whether Kirkland favored African-American employees, Breslin stated, "[h]e hired a lot of African-Americans; put it that way." (Doc. No. 111 Ex. B at 10.) Plaintiff also intends to offer Breslin's statement that she "can't think of any" non-African-Americans that were hired by Kirkland. (*Id*. at 11.)

Plaintiff, citing Federal Rule of Evidence 406, argues that Breslin's testimony constitutes admissible evidence of Kirkland's "habit and/or practice of favoring blacks over whites." (Doc.

No. 111 at 6.) Federal Rule of Evidence 406 provides:

> Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion as in conformity with the habit or routine practice.

Fed. R. Evid. 406. The court in *United States v. Wright*, 206 F. Supp. 2d 609, 615 (D. Del. 2002), stated that:

> The Advisory Committee Notes to Rule 406 explain that habit "describes one's regular response to a repeated situation. . . such as the habit of going down a particular stairway two stairs at a time, or of giving the hand signal for a left turn. . . . The doing of habitual acts may become semi-automatic."

*Id.* (citing Fed. R. Evid. 406 advisory committee's note); *see also* 2 Jack B. Weinstein & Margaret A. Berger, Weinstein's Federal Evidence § 406.02[3], at 406 (2d ed. 2000) (explaining that "[a] habit is specific and particular [and that] it must be distinguished from character, which is a generalized description of one's disposition."). "Thus, to qualify as habit evidence, the proffered evidence must be specific and particular." *Wright*, 206 F. Supp. 2d at 615. Plaintiff asserts that Kirkland's alleged discriminatory behavior of "treating blacks and whites in a vastly different manner" (Doc. No. 111 at 8) should be treated as a habit and therefore be admitted in accordance with Rule 406.

We disagree. "[E]vidence of an employer's overall policy of discrimination against several individuals under varying circumstances is not the sort of repeated conduct covered by Rule 406." *McCarrick v. New York City Off-Track Betting Corp.*, No. 91-CV-5626, 1995 U.S. Dist. LEXIS 5849, at *16 (S.D.N.Y. May 3, 1995). "Before a court may admit evidence of habit, the offering party must establish the degree of specificity and frequency of uniform response that ensures more than a mere 'tendency' to act in a given manner, but rather, conduct that is 'semi-

automatic' in nature." *Zubulake v. UBS Warburg LLC*, No. 02-CV-1243, 2005 U.S. Dist LEXIS 4085 at *9 (S.D.N.Y. Mar. 16, 2005). Evidence of discriminatory animus is far from a specific and particular behavior, such as walking down a stairway two steps at a time. Evidence of discriminatory animus is a generalized description of Kirkland's disposition. Accordingly, we conclude that Rule 406 does not encompass the Breslin testimony.

On the other hand, if Plaintiff intends to introduce the Breslin testimony as circumstantial evidence of Kirkland's discriminatory intent in accordance with Federal Rules of Evidence 401 and 402, we are cognizant that the Supreme Court has noted that "[a]ll courts have recognized that the question facing the triers of fact in discrimination cases is both sensitive and difficult. . . . There will seldom be 'eyewitness' testimony as to the employer's mental processes." *United States Postal Serv. Bd. of Governors v. Aikens*, 460 U.S. 711, 716 (1983). "It is the rare situation when direct evidence of discrimination is readily available, thus victims of employment discrimination are permitted to establish their cases through inferential and circumstantial proof." *Kline v. Tenn. Valley Auth.*, 128 F.3d 337, 348 (6th Cir. 1997). Therefore, "we must be mindful not to cripple a plaintiff's ability to prove discrimination indirectly and circumstantially 'by evidentiary rulings that keep out probative evidence because of crabbed notions of relevance.'" *Robinson v. Runyon*, 149 F.3d 507, 513 (6th Cir. 1998) (citation omitted).

The Third Circuit has repeatedly held that "discriminatory comments by nondecision makers, or statements temporally remote from the decision at issue, may properly be used to build a circumstantial case of discrimination." *Abrams v. Lightolier, Inc.*, 50 F.3d 1204, 1214 (3d Cir. 1995); *see also Walden v. Georgia-Pacific Corp.*, 126 F.3d 506, 521 (3d Cir. 1997) ("Stray remarks by nondecisionmakers may be properly used by litigants as circumstantial

evidence of discrimination."); *Brewer v. Quaker State Oil Refining Corp.*, 72 F.3d 326, 333 (3d Cir. 1995) ("[A] supervisor's statement about the employer's employment practices or managerial policy is relevant to show the corporate culture in which a company makes its employment decision and may be used to build a circumstantial case of discrimination."); *Lockhart v. Westinghouse Credit Corp.*, 879 F.2d 43, 54 (3d Cir. 1989) (holding that a stray remark by a major company executive is admissible).

While Defendant's hiring practices are certainly relevant to the instant lawsuit, one employee's speculation regarding hiring practices does not qualify as circumstantial evidence of Kirkland's discriminatory animus. *See Makenta v. Univ. of Pa.,* 88 Fed. Appx. 501, 505 (3d Cir. 2004) (finding that circumstantial evidence of "vague allegations of malicious termination, unsupported by any facts, are insufficient to support a claim. . . ."); *Tavakoli-Nouri v. CIA*, No. 99-3470, 2000 WL 1449850, at *2 (E.D. Pa. Sept. 26, 2000) (stating that parties cannot "simply rely on bare assertions, conclusory allegations or suspicions to support . . . claims."). As in a motion for summary judgment, parties cannot rely on "unsupported assertions, speculation or conclusory allegations." *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). Breslin's opinion concerning Kirkland's hiring practices does not have a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence as required by Rule 401. It is also significant that Breslin's testimony on this subject is clarified by other testimony at her deposition in which she indicated as follows:

> Q: Is there any reason particularly you recall that you were able to recollect that Mr. Kirkland hired a lot of African-Americans?
> A: I just started to see a lot of new employees around.

Q: And at that time do you recall what you attributed that to?
A: No. I mean we had a shortage of nurses and CNAs. We needed to hire people.

(Doc. No. 111 Ex. B at 12.) Obviously, Kirkland's hiring practices during the time in question were, in part, a response to a shortage of nurses. Accordingly, the relevance of Breslin's testimony on the issue of Kirkland's discriminatory animus is marginal at best.

*B. Rodilico's Testimony*

Defendant asserts that Plaintiff should be precluded from offering Rodilico's testimony, but again fails to identify the testimony or evidence that it contests. (Doc. No. 103 at 2.) Plaintiff explains that Rodilico was a Red Cross Trainer who was not employed by Defendant, but who taught classes at Defendant's Crestview facility throughout 2002. (Doc. No. 111 Ex. C at 7.) Plaintiff asserts that she intends to introduce the following testimony: (1) Rodilico's impressions of Kirkland's hiring practices; (2) Rodilico's recollections of Plaintiff's expression that Kirkland discriminated against Plaintiff; (3) Rodilico's recollections of other employees who complained of being discriminated against; (4) Rodilico's feelings that Kirkland discriminated against her because she is Caucasian; and (5) Rodilico's impression that Kirkland spent more time with the African-Americans he hired than with other employees. (Doc. No. 111 at 7.)

We first address the admissibility of Plaintiff's assertion that Rodilico "explained that the only employees that Mr. Kirkland hired were African-American." (*Id*.) Plaintiff points to the following testimony to support this assertion:

Q. You mentioned there were three people. Do you recall if they were male or female?
A. Female
Q. Do you recall their ethnicity, or their race?
A: African-American
Q: Are you indicating that a few of them were African-American or all of

them or one of them?

A: The three people that I know that he – that I remember him hiring. He may have hired I don't know how many other people. I just don't remember.

(Doc. No. 111 Ex. C at 49-50.) As discussed above, while Defendant's hiring practices are certainly relevant to this lawsuit, one person's speculation regarding these hiring practices does not qualify as circumstantial evidence of discriminatory animus. Moreoever, it is significant that, other than the three African-American employees mentioned, Rodilico does not claim to know how many other employees Kirkland may have hired. We are satisfied that this part of Rodilico's testimony is not relevant. It does not have a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Accordingly, Rule 401 requires its exclusion.

Next, Plaintiff asserts that she intends to introduce Rodilico's recollections of Plaintiff's expression that Kirkland discriminated against Plaintiff. Rodilico testified as follows:

Q: Did you ever witness or did Mrs. Waters ever suggest to you that she felt that Mr. Kirkland treated her differently because she was white and he was black?

A: Yes

Q: She made those statements to you?

A: Yes

(Doc. No. 111 Ex. C at 118.) This part of Rodilico's testimony must be excluded because it is in direct violation of Federal Rule of Evidence 801, which provides that "[h]earsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Fed. R. Evid. 801. Federal Rule of Evidence 802 requires exclusion of such testimony.

The hearsay rule is designed to exclude a certain type of unreliable evidence.

> Hearsay is presumptively unreasonable because when an out-of-court statement is offered for its truth, it is only probative if the person who made the statement - the declarant - was telling the truth. But the truthfulness of an out-of-court declarant cannot be assessed by the ordinary methods with which we determine the truth of testimonial evidence - oath, cross-examination, and the factfinder's scrutiny of the witness' demeanor. Therefore, hearsay is presumptively unreliable.

4 Stephen A. Salzburg et al., Federal Rules of Evidence Manual § 801.02 (8th ed. 2002).

Accordingly, Rodilico's testimony regarding Plaintiff's statements is barred by the hearsay rule.[3]

Next, Plaintiff asserts that she intends to introduce Rodilico's recollection that other employees complained of being discriminated against. (Doc. No. 111 at 7.) When asked whether Rodilico witnessed Kirkland treat Plaintiff differently because she was white, Rodilico responded:

> A: She wasn't the only one who said that either, other employees did. But again, I mean, you would hear people, like if I were on the floor with students, but I couldn't tell you who it was.

(Doc. No. 111 Ex. C at 118-19.) Later, Rodilico testified as follows:

> Q: Can you describe for me in numbers the employees at Crestview that seemed to suggest that Mr. Kirkland was a racist?
> A: I don't know how many. Was it more than one or two? Yes.
> . . .
> Q: Can you, sitting here today, recount any of those comments specifically?
> A: No.
> Q: Where were the comments made, in the Hunt Lounge. In the corridors? Where were they made?
> A: Usually – I was down on the floor with students, so it would be on the clinical areas. . . .
> Q: . . . So you're telling me that between one and ten employees in clinical areas of Crestview center expressed opinions to you –
> A: And for me to hear, not necessarily talking to me but it was within hearing of myself.

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[3]This evidence may be admissible as a prior consistent statement if Defendant elicits evidence or testimony indicating that Plaintiff did not complain about racial discrimination until after the filing of her Amended Complaint.

Q: And that Mr. Kirkland was a racist?
A: Yes. Or he – I don't think they used the term racist, but they said he treated them different than African-American employees or that they thought he treated them different because they were white. Do I remember anybody actually saying the term racist, no, because you keep using that word, but I'm not sure that's the word that was used.

(*Id*. at 135-37.)

Again, any statement Rodilico may have overheard is barred by Rule 802. Plaintiff argues that "these statement were made by agents of Defendant and are therefore admissions that do not qualify as hearsay. . . . Further, they are present sense impressions and are therefore subject to a hearsay exception in any event." (Doc. No. 111 at 7.) The exceptions to which Plaintiff refers are Federal Rule of Evidence 801(d)(2)(D) and Federal Rule of Evidence 803(1). Rule 801(d)(2)(D) provides that "[a] statement is not hearsay if . . . [it is] a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship." Fed. R. Evid. 801(d)(2)(D). Federal Rule of Evidence 803(1) provides that "[a] statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter" shall not be excluded by the hearsay rule. Fed. R. Evid. 803(1). Initially, it is impossible to determine who the people were who made the alleged comments or what their relationship was to Defendant. Rodilico stated that she could not identify any of the people that she overheard. (Doc. No. 111 Ex. C at 118-19.) Moreover, Rodilico's vague recollections of unidentified employees' perceptions of Kirkland's discriminatory conduct does not constitute "matter within the scope of the agency of employment" as required by Rule 801(d)(2)(D). Furthermore, the statements do not qualify as present sense impressions. The present sense impression exception to the hearsay rule has three

principle requirements: "(1) [t]he declarant must have personally perceived the event described; (2) [t]he declaration must be an explanation or description of the event rather than a narration; and (3) [t]he declaration and the event described must be contemporaneous." *United States v. Mitchell*, 145 F.3d 572, 576 (3d Cir. 1998). Obviously, Rodilico's recitation of statements allegedly made by unidentified employees does not meet any of the requirements for admissibility as a present sense impression.

Next, Plaintiff asserts that she intends to introduce Rodilico's impressions that Kirkland discriminated against her because she is Caucasian. (Doc. No. 111 at 7.) Rodilico testified in this regard as follows:

> Q: Did you form an impression, other than what she [Plaintiff] stated to you, that he [Kirkland] treated people differently because of their race?
> A: Yes, I did, I felt that he did.
> . . .
> Q: Did you ever formulate an impression that he was, in fact, a racist?
> A: You're asking for my personal opinion, not anything that he ever said to anybody?
> Q: Yes
> A: Yes
> Q: You did?
> A: Yes
> Q: What do you base that on?
> A: Just the way he talked to people and the way he moved jobs around and the way he brought new people in. You're asking me if that's my opinion and that's my opinion.
> . . .
> Q: Was it your perception that Mr. Kirkland was prejudiced against white people?
> A: Did I feel he was prejudiced against white people? Yes.

(Doc. No. 111 Ex. C at 119, 121, 164.) While Plaintiff is correct that no rule of evidence bars Rodilico from testifying about her own experience of being discriminated against by Kirkland, and while we would allow Rodilico to testify to such discrimination as circumstantial evidence of

Kirkland's discriminatory animus, Plaintiff does not point to any testimony by Rodilico which describes how Kirkland discriminated against her. Rather, Rodilico testifies vaguely that she believes Kirkland is a racist, giving no examples that provide support for her opinion. Accordingly, this part of Rodilico's testimony will be excluded.

Finally, Plaintiff asserts that she intends to introduce Rodilico's impression that Kirkland spent more time with the African-Americans that he hired than with other employees. (Doc. No. 111 at 7.) For this assertion, Plaintiff refers to the above recited testimony and the following testimony:

> Q: Did Mr. Kirkland ever speak to you in a way that was inappropriate to you, personally?
> A: I didn't like the way he talked to me.
> Q: Why?
> A: Because I felt he talked down to me and that he wasn't always – I wasn't sure if what he was telling me is what was reality all the time, you know, like sometimes you feel like people are telling you something that you want to hear rather than what's really going on.

(*Id*. Ex. C at 123.) Evidence that Kirkland may have "talked down" to Rodilico and told her what she wanted to hear does not constitute circumstantial evidence of Kirkland's discriminatory animus. Accordingly, the testimony will also be excluded.

*C. Leonardo's Testimony*

Defendant asserts that Plaintiff should be precluded from offering Leonardo's testimony. (Doc. No. 103 at 2.) Plaintiff proffers that Defendant employed Leonardo at Crestview from March, 2001, through August, 2002, as a restorative nurse coordinator. (Doc. No. 111 Ex. A at 6-7.) Leonardo is Caucasian. Plaintiff asserts that Kirkland terminated Leonardo's employment because she is Caucasian and offers the following testimony in support of this assertion:

> He [Kirkland] called me in the office one day and just told me that he felt that there's no more need for my position as restorative nurse coordinator, it was no longer in the budget, furthermore, that I was – I forgot exactly how he put it – I'm taking an L.P.N. position away from someone else. And that's when I told him that I would be giving my two-weeks' notice then.[4]

(*Id*. at 28.) Plaintiff also asserts that Leonardo's position was given to an African-American nurse. Leonardo testified:

> A: . . . . There were special treatment towards the black nurses that were there. I don't think I answered that right.
> Q: What sort of special treatment for the black nurses?
> A: There was one particular nurse that the two of them would have cigarette breaks about 20 times a day, and he seemed to just treat them more kindlier than the other nurses.
> Q: Do you think Mr. Kirkland was more lenient in his treatment of the black nurses?
> A: Yes.

(*Id*. at 49.) Leonardo also testified that Kirkland "was rude to quite a few nurses. But I didn't see that with the black nurses, though." (*Id*. at 57.)

We find that Leonardo's testimony that Kirkland took more cigarette breaks with and was "kindlier" to African-American nurses adds little to the determination of Kirkland's discriminatory animus. Moreover, the testimony that Kirkland "was more lenient in his treatment of the black nurses" is a bold conclusion with no specific support in the record. We do find, however, that Leonardo's assertions that she was terminated because she is Caucasian and replaced by an African-American nurse is relevant. This testimony does have a tendency to make the existence of a fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Cynthia Wilcox, another employee at

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[4]Leonardo's description of Kirkland's comments is not barred by the hearsay rule. Federal Rule of Evidence 801(d)(2)(D) allows statements made by the party's agent or servant concerning a matter within the scope of the agency or employment. Fed. R. Evid. 801(d)(2)(D).

Crestview, testified that Kirkland replaced Leonardo with Josette Rawls, an African-American employee, within a few days of Leonardo's termination. (*Creely v. Genesis Health Ventures*, 04-CV-0679, Doc. No. 30 Ex. R at 97-98.) Accordingly, we will not exclude Leonardo's testimony regarding her employment termination and the testimony that she was replaced by Rawls, an African-American.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| JILL WATERS | : | CIVIL ACTION |
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| v. | : | |
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| GENESIS HEALTH VENTURES, INC. | : | |
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**ORDER**

AND NOW, this 25th day of May, 2005, upon consideration of Defendant Genesis Health Ventures, Inc.'s Motion in Limine (Doc. No. 103, No. 03-CV-2909) and Plaintiff's Response thereto, it is ORDERED that the testimony of Dolores Breslin and Margaret Rodolico shall not be used at trial. Edith Leonardo may testify regarding her termination from employment.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge